

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

WARREN ANTONIO LEE,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 08-3299-CV-S-RED-H
MARTY ANDERSON, Warden,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate formerly confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner has failed to exhaust administrative remedies, it will be recommended that he be denied leave to proceed in forma pauperis.

After a Show Cause Order was entered, the United States filed its response. Counsel for petitioner filed a Motion to Withdraw. Thereafter, petitioner was granted an opportunity to file a pro se traverse. Petitioner contends that he has been denied access to the Residential Drug Abuse Treatment Program [“RDAP”] at the Medical Center.

The files and records in this case establish that petitioner is lawfully in the custody of the Bureau of Prisons. He is serving a 480-month sentence, imposed by the United States District Court for the District of Guam. He has a projected release date of August 16, 2030. According to respondent, petitioner was informed that inmates can be eligible for the RDAP program 36 months prior to release. Petitioner does not meet this requirement. The Attorney-Advisor at the Medical

Center has also provided an affidavit that petitioner failed to exhaust available administrative remedies during his confinement at the Medical Center.

Because petitioner is not eligible at this time for the RDAP program, his contentions are without merit. Further, it is also clear that petitioner has not exhausted all available administrative remedies. It is well-settled law that an inmate must exhaust administrative remedies prior to seeking habeas corpus relief. See Leighnor v. Turner, 884 F.2d 385 (8th Cir. 1989); Willis v. Ciccone, 506 F.2d 1011 (8th Cir. 1974).

Because petitioner has failed to exhaust administrative remedies regarding the RDAP program, and because his contentions are otherwise without merit, it must be recommended that the petition for writ of habeas corpus be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND, Chief
United States Magistrate
Judge

Date: 9/4/09

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.